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April 2, 2015

Via ECF

The Honorable Stanley R. Chesler, U.S.D.J.
U.S. District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building
50 Walnut Street
Newark, New Jersey 07102

Re: In re Merck & Co., Inc. Secs., Deriv. and ERISA Litig., Nos. 05-1151 and 05-2367

Dear Judge Chesler:

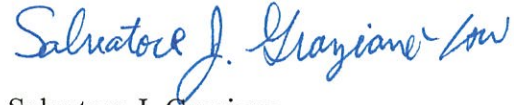
We write to bring to the Court's attention the Supreme Court's decision in *Freidus v. ING Groep*, No. 13-1505 (U.S. Mar. 30, 2015) (Summary Disposition), as supplemental authority. Lead Plaintiffs' letter to the Court dated March 25, 2015, concerning the Supreme Court's decision in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, No. 13-435, 2015 WL 1291916, -- S. Ct. -- (Mar. 24, 2015), noted that *Omnicare* rejects Defendant Scolnick's contention, relying on *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. 2011), that to allege the falsity of Defendants' statements of purported opinion concerning the naproxen hypothesis, Lead Plaintiffs must allege that Defendants *subjectively* disbelieved those statements. *See* Scolnick S.J. Brief at 11 n. 5, 17; Scolnick S.J. Reply at 6, n.5. Instead, the Supreme Court in *Omnicare* held that a false opinion may also be pleaded by alleging that the speaker lacked a reasonable basis for the stated opinion, even if he or she *did* subjectively hold it, or that the defendant was in possession of facts that did not align with the opinion but failed to disclose those facts. *See Omnicare*, 2015 WL 1291916, at *passim*.

In vacating and remanding *Freidus* with instructions to reconsider it in light of *Omnicare*, the Supreme Court confirmed that *Omnicare* effectively overruled *Fait*'s holding that *Freidus* and Defendant Scolnick relied on for the proposition that "[l]iability for opinions . . . will lie 'only to the extent that the statement was both objectively false and disbelieved by the defendant.'" *See Freidus v. ING Groep, N.V.*, 543 F. App'x 93, 95 (2d Cir. 2013) (Summary Order) (quoting *Fait*, 655 F.3d at 110). Thus, the Supreme Court's disposition of *Freidus* moots this authority relied on by Defendant Scolnick and refutes Defendants' statements to the Court that *Omnicare* holds that "opinions can be false *only* if the speaker did not hold the belief she professed." Scolnick Ltr. at 1-2; *see also* Merck Ltr. at 1, 2.

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Respectfully submitted,

A handwritten signature in blue ink that reads "Salvatore J. Graziano" followed by a stylized flourish.

Salvatore J. Graziano

cc: Counsel of Record (via ECF)